

AN ORDINANCE BY COUNCILMEMBER MICHAEL J. BOND

AS AMENDED BY CITY UTILITIES COMMITTEE

01-O-0538

AN ORDINANCE TO AMEND VARIOUS SECTIONS OF CHAPTER 138 REGARDING STREETS, SIDEWALKS AND THE PUBLIC RIGHT-OF-WAY SO AS TO CLARIFY THE INTENT OF SPECIFIC SECTIONS CONTAINED THEREIN; TO REPEAL CONFLICTING SECTIONS; AND FOR OTHER PURPOSES.

WHEREAS, it is the charge of the City Council to protect the health, safety, welfare, comfort and convenience of residents and visitors to the City of Atlanta, including maintaining a safe and convenient municipal street system and other Public Right-of-Way; and

WHEREAS, the City of Atlanta previously enacted a comprehensive Public Right-of-Way Ordinance to allow the City to otherwise manage its Public Right-of-Way in a manner as contemplated by the Federal Telecommunications Act of 1996; and

WHEREAS, based on observations of the City staff and comments from the industry, there is a need to clarify the intent of certain provisions and further set forth the responsibilities of those conducting activities in the Public Right-of-Way; and

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS AS FOLLOWS:

SECTION 1: That Section 138-127 (h)(8) Right-of-Way Management Fee which currently reads as follows:

Section 138-127(h)(8) Right-of-Way Management Fee. In the event the franchise fee is passed through by a Telecommunications Provider to the citizens of Atlanta as a cost of providing service, such fees shall not be labeled as attributed to the City of Atlanta; however they shall be labeled as Right-of-Way Management Fee.

Is deleted thereby and is substituted in lieu thereof, a new subsection (h)(8) of Section 138-127 shall read as follows when amended:

Section 138-127 (h)(8) Right-of-Way Franchise Fee In the event the franchise fee is passed through by a Telecommunications Provider to the citizens of Atlanta as a cost of providing service, such fees shall be labeled as City of Atlanta Right-of-Way Franchise Fee.

SECTION 2: That Section 138-40 (b)(2) Mandate to Place Facilities Underground which currently reads as follows:

Section 138-40(b)(2) Mandate to Place Facilities Underground.

To the extent permitted by law, permits for franchises will be conditioned upon the placement of transmission and distribution facilities underground.

Is deleted thereby and is substituted in lieu thereof, a new subsection (b)(2) of Section 138-40 shall read as follows when amended:

Section 138-40(b)(2) Mandate to Place Facilities Underground.

The City may designate geographical areas in which facilities shall be placed underground subject to applicable state and federal law.

SECTION 3: That Section 138-65(8)(a)(11) As-Built Plans which currently reads as follows:

Section 138-65(8)(a)(11) As-Built Plans.

As-built plans and drawings in a form specified by the Department of Public Works. Permittee shall not be required to supply privileged information. No Person shall artificially under-estimate the size of their proposed system to evade the purpose of this article;

Is deleted thereby and is substituted in lieu thereof, a new subsection (8)(a)(11) of Section 13865 shall read as follows when amended:

Section 138-65(8)(a)(11) As-Built Plans.

As-built plans and drawings in a form specified by the Department of Public Works. Plans submitted to the Department of Public Works for permit approval, which have been updated and certified to reflect actual construction and field changes, shall satisfy this section. Permittee shall not be required to supply privileged information. Any such plans submitted to the City, to the extent permitted by applicable law, shall remain proprietary. No Person shall artificially under-estimate the size of their proposed system to evade the purpose of this article.

SECTION 4: That Section 138-65 Notice to abutting property owners which currently reads as follows:

Section 138-65(13) Notification to abutting property owners.

Notification to abutting property owners. The Commissioner of Public Works shall require the Person conducting activities pursuant to the permit and construction activities within the Public Right-of-Way to provide each abutting property owner with reasonable notification of any impending construction work that would unreasonably interfere with either egress or ingress onto said owner's property.

Is deleted thereby and is substituted in lieu thereof, a new subsection (13) of Section 138-65 shall read as follows when amended:

Section 138-65(13) Notice to abutting property owners or occupants.

Notification to abutting property owners or occupants. The Commissioner of Public Works shall require the Person conducting activities pursuant to the permit and construction activities within the Public Right-of-Way to provide each abutting property owner or occupant with reasonable and timely notification of any impending construction work that would unreasonably interfere with either egress or ingress onto said owner's property.

SECTION 5. That Section 138-127(h)(5) Officer Certification which currently reads as follows:

Section 138-127(h)(5) Officer Certification.

Certification and Payment of Fees. Fees shall be paid on a quarterly basis for the prior quarter, and shall be due on April 1, July 1, October 1, and the first business day of January of each year. Projections from the prior year shall be adjusted in the first quarter in the following year. On or before each quarterly payment date, all Franchisees shall provide a certificate, signed and attested to by appropriate corporate officers or representative, which verifies the Franchisee's Gross Revenue for the prior quarter.

Is deleted thereby and is substituted in lieu thereof, a new subsection (h)(5) of Section 138-127 shall read as follows when amended:

Section 138-127(h)(5) Officer Certification.

Certification and Payment of Fees. Fees shall be paid on a quarterly basis for the prior quarter, and shall be due on April 1, July 1, October 1, and the first business day of January of each year. Projections from the prior year shall be adjusted in the first quarter in the following year. On or before each quarterly payment date, all Franchisees shall provide a certificate, signed and attested to by appropriate corporate officers or authorized corporate representative which verifies the Franchisee's Gross Revenue for the prior quarter.

SECTION 6: That Section 138-127(h)(6) Quarterly Reports which currently reads as follows:

Section 138-127(h)(6) Quarterly Reports.

Quarterly Reports. On or before each quarterly payment date, each Telecommunications Franchisee and Revocable Licensee shall submit a quarterly report to the Department of Public Works to inform the City of its on-going activities related to the occupancy of the Right-of-Way, to provide an on-going inventory of its Equipment located in the Right-of-Way, and to provide reasonable documentation of the accuracy of the Franchise Fees or License Fees paid.

Is deleted thereby and is substituted in lieu thereof, a new subsection (h)(6) of Section 138-127 shall read as follows when amended:

Section 138-127(h)(6) Quarterly Reports.

Quarterly Reports. On or before each quarterly payment date, each Telecommunications Franchisee and Revocable Licensee shall submit a quarterly report to the Mayor's Office of Telecommunication to indicate reasonable documentation of the accuracy of the Franchise Fees or License Fees paid.

SECTION 7: That Section 138-127 (h)(7) Inspection and audit which currently reads as follows:

Section 138-127 (h)(7) Inspection and audit.

The City reserves the right to audit the accuracy of the reports submitted for the purpose of insuring compliance with this Article. Such audits shall be conducted by an auditor chose by the City. In cases where the franchisee has failed to submit a certificate verifying Gross Revenue for two consecutive quarters, the costs of such audit shall be paid for by the Franchisee. In addition, should the audit reveal understatement of Gross Revenue more than Five Percent (5%) by the Franchisee, the costs of such audit shall be paid for by the Franchisee.

Is deleted thereby and is substituted in lieu thereof, a new subsection (h)(7) of Section 138-127 shall read as follows when amended:

Section 138-127 (h)(7) Inspection and audit.

The City reserves the right to audit the accuracy of the reports submitted for the purpose of insuring compliance with this Article. Such audits shall be conducted by an auditor chosen by the City. In cases where the Franchisee has failed to submit a certificate verifying Gross Revenue for two consecutive quarters, the costs of such audit shall be borne by the Franchisee. In addition, should the audit reveal an understatement of Gross Revenue more than Five Percent (5%) by the Franchisee and the City has received an underpayment of franchise fees, City shall receive the legal rate of interest on all such underpayments.

A true copy,

Rhonda Daughin Johnson
Municipal Clerk, CMC

ADOPTED as amended by the Council
APPROVED by the Mayor

NOV 05, 2001
NOV 13, 2001

RCS# 3240
11/05/01
6:36 PM

Atlanta City Council

Regular Session

01-O-0538 AMEND CHAPTER 138, Streets, Sidewalks
 & Public Right-of-Way
 ADOPT/SUB/AMEND

YEAS: 13
NAYS: 1
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 0
ABSENT 0

Y McCarty	Y Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
Y Bond	Y Morris	Y Maddox	N Alexander
NV Winslow	Y Muller	Y Boazman	NV Pitts

01-O-0538

01-0538

(Do Not Write Above This Line)

An Ordinance by Councilmember Michael J. Bond to amend Chapter 138, Streets, Sidewalks and other places, Articles I, II, III, IV and V, so as to include definitions of new terms where applicable; to reorganize sections affecting the public rights-of-way; to consolidate, where appropriate, various sections pertaining to encroachments, construction and excavations in the public rights-of-way, bus shelters, public vending devices and telephones; to provide for the granting of one or more nonexclusive franchises for Telecommunications Services within the City of Atlanta; and for other purposes.

ADOPTED BY

NOV 05 2001

COUNCIL

As Amended

- ☐ CONSENT REFER
☐ REGULAR REPORT REFER
☐ ADVERTISE & REFER
☐ 1st ADOPT 2nd READ & REFER
☒ PERSONAL PAPER REFER

Date Referred 3/19/01

Referred To: City Utilities

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
 Date _____
 Chair _____
 Referred to _____

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

FINAL COUNCIL ACTION

☐ 2nd ☐ 1st & 2nd ☐ 3rd

Readings

☐ Consent ☐ V Vote ☒ RC Vote

CERTIFIED

NOV 5 2001

ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED

NOV 05 2001

DEPUTY MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

NOV 13 2001